

SUMMARY MINUTES
CITY OF SEDONA LOCAL RETIREMENT BOARD FOR THE
PUBLIC SAFETY PERSONNEL RETIRMENT SYSTEM
Vultee Conference Room
June 22, 2010 at 10:00 a.m.

Members Present

Mark DiNunzio
Dan Hautman
Karl Waak
Ron Wheeler
Al Witte

Others Present

Jeremy Ebert
Joleen Ebert
Mike Goimarac
Marlayne Hatler
David Niederdeppe
Ronnie Snodgrass
Walt Spokes
Victoria Ward
Nancy Wilson

Members absent

none

1. The meeting was called to order at 10:00 a.m.
2. The minutes of the April 7, 2010, meeting were not presented.
3. No items were brought to the board by other persons present at the meeting.
4. Mike Goimarac, representing the City of Sedona, presented an overview of the Open Meeting Law statutes. The Board is required by statute as a public body subject to the provisions of the Open Meeting Law. All business done by a public body must be scrutinized. Mike Goimarac went over the general guidelines of the law. A meeting is defined as the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action. The board must give notice of a meeting at least 24 hours ahead of time including an agenda and can only make decisions on agenda items. Within three working days after a meeting, the board must post on the city's website a statement describing the legal actions taken by the public body of the city or town during the meeting. There are seven reasons to go into executive session. These are listed in ARS 38.431.03. One of the reasons is to discuss or consult with an attorney for legal advice. Minutes are taken during the executive session and are kept confidential.
5. David Niederdeppe introduced himself to the board and described his background in matters of public safety personnel retirement and other human resources topics. He is currently spending approximately 30-35% of his time dealing with public safety retirement issues, and is currently working with the Sedona Fire District. His fee would be \$200/hour or he can work on a retainer basis.

Ron Wheeler moved, and
Al Witte seconded,

To retain David Niederdeppe as counsel for the Sedona Police Department Local Retirement Board.

Motion carried unanimously

6. The application of Deferred Retirement Option Plan (DROP)/Normal Retirement of Jerome Bilas was discussed.

Ron Snodgrass gave an overview of the DROP Program. Once an employee reaches 20 years of service, the employee may elect to go into DROP for a maximum of 60 months. Nothing changes regarding the employee's status. The normal retirement benefit is calculated and goes into a trust account that earns interest at a specified rate. The employee and the employer stop making normal contributions to PSPRS. Once an employee goes into the program, it is irrevocable except for certain reasons, such as if the monthly benefit came in at a significantly lower amount than his calculations.

Ron Wheeler moved;
Karl Waak seconded,

To approve the application of Deferred Retirement Option Plan (DROP)/Normal Retirement of Jerome Bilas effective June 26, 2010, subject to verification of final calculations.

Motion carried unanimously.

7. The Application for Normal Retirement for David Zanot was discussed. Zanot was terminated as the result of a reduction in force on April 9, 2010.

Al Witte moved;
Ron Wheeler seconded,

To approve the Application for Normal Retirement for David Zanot effective July 1, 2020, subject to verification of final calculations.

Motion carried unanimously.

- 8a. Victoria Ward presented background information regarding Jeremy Ebert's termination from the Sedona Police Department. He was employed from May 13, 2007, until his termination on December 15, 2009. He injured his back on July 13, 2009 and was released to full duty. He re-injured his back on October 18, 2009, during an arrest. He was returned to full duty on October 20, 2009. An investigation was begun into the incident, and he was terminated as a result of this incident. He appealed the termination to the Personnel Board, and the board upheld the termination.

Mark DiNunzio asked about Ebert's status while the investigation was ongoing; he was suspended beginning November 2, 2009, until his termination December 15, 2009. Ron Wheeler asked whether he was on full duty at the time of separation; Victoria Ward said he was.

David Niederdeppe asked if the applicant wanted to present information, and Mark DiNunzio invited Ebert to speak to the board.

Ebert testified that he believed some of the medical issues he's now facing are the result of the injury he sustained on duty. Board members asked extensive questions about his medical issues.

Mark DiNunzio suggested the board go into Executive Session

Ron Wheeler moved;
Karl Waak seconded,

To go into Executive Session for purposes of legal consultation regarding this issue. Motion carried unanimously. Board convened to Executive Session at 10:48 a.m.

Board returned to Open Session at 11:25 a.m.

Mark DiNunzio read the governing statutes as they apply to accidental disability, ARS 38-844B and ARS 38-842 Section 1. The primary threshold is whether the termination was related to these two sections. Ron Wheeler said that the reason for termination was performance of duty and not accidental disability. Ebert asked to join the conversation. Al Witte stated the cause of termination wasn't due to medical conditions. Ebert agreed. Witte asked if Ebert came back to work too early? Ebert replied that he wasn't sure. His doctor cleared by him to return to full duty with physical therapy. Dan Hautman reviewed the last release to full duty and what functions he could do. Karl Waak talked about an unwritten police code about fighting through the pain as being part of the job. Ebert stated that he loved his job and worked through the pain; that's a part of the job. Dan Hautman asked about his time off from the first time injury. Ebert said it hurt to sit and hurt to drive. Al Witte asked whether Ebert brought this up to his doctor. Ebert said he did and that he spoke to his supervisor; it didn't hurt to drive until the day following the first injury. Mark DiNunzio said Ebert came back to full duty two days after the second injury. Ebert stated that he pursued an appeal to get his job back. He had the police union represent him. He is still going to doctor and physical therapy and he is still trying to get his job back as a police officer. Ron Wheeler stated Ebert's application doesn't meet the statutory requirements for accidental disability.

Ron Wheeler moved,
Karl Waak seconded

Based on evidence for the reason of termination, Ebert's application doesn't meet the requirements of ARS 38-844B and recommends declining the accidental disability request.

Ebert asked how the reason for his termination affects his application for accidental disability. Further explanation did not clarify the issue for Ebert.

Motion carried unanimously.

- 8b. Victoria Ward presented the city's information regarding Walt Spokes. He was hired December 31, 1990 and had worked for a couple of agencies before Sedona. He was released to full duty in 2003 after his injury and worked as a

sergeant and detective sergeant. He was working full duty as of April 9, 2010, when he was laid off pursuant to a reduction in force.

Spokes described his injury. On December 13, 2002, he was the victim of a felony assault and had injuries as a result. He was unable to work for approximately six months, during which he was on the city's disability program while recovering from his injuries. He stated the reason for his termination was not punitive. He stated that he can't do entry-level duties and has been injured a couple of times since the 2002 incident and is still having problems. His ability to return to the workforce is diminished. A physician could address the nature of his injuries. He is eligible for re-hire but wouldn't be able to pass the physical exam. If granted the accidental disability application it doesn't cost the city, PSPRS, or any other agency any additional funds; it provides a tax advantage. Dan Hautman talked about how he has helped at the range and has heard Spokes comment about his injuries at the range. Hautman said the cause of termination was a reduction in force but it doesn't seem fair. The only advantage to Spokes is a tax issue. Ron Wheeler stated this is a different situation than Ebert's and that he doesn't feel the statute is covered in Spokes's situation. Mark DiNunzi verified with staff present that selection of people to be laid off pursuant to a reduction in force was to eliminate positions and the injury was never discussed. Spokes is not receiving any further workers compensation treatment. Spokes stated he is not able to continue his career because he is not able to go to another agency.

Ron Wheeler moved;
Karl Waak seconded,

To go into Executive Session for purposes of legal consultation regarding this issue. Motion carried unanimously. Board convened to Executive Session at approximately 12:00 noon.

Board returned to Open Session at 12:24 p.m.

Spokes addressed the board and indicated he had served on the board and believes his application meets the spirit of the law. Spokes would like to be considered for normal retirement if his accidental disability request is denied. The fund manager can be advised on the action taken and that Spokes would not lose his appeal rights.

Ron Wheeler moved,
Al Witte seconded

Based on evidence for the reason of termination, Spokes's application doesn't meet the requirements of ARS 38-844B for accidental disability and moves to decline the application.

Mark DiNunzio amended the motion to grant an application for Normal Retirement and that notice be given to the fund manager. The applicant retains his rights under statute to contest the action on his earlier disability application.

Ron Wheeler seconded the amended motion

Motion carried unanimously.

9. No old business brought to board.
10. Jessica Starkey-Bryson has recently left employment of the Sedona Police Department, and it is understood that she no longer works for an agency that is part of PSPRS. She must request action on her contribution to the system; it is not the board's responsibility to initiate this type of action.

Meeting adjourned 12:39 p.m.

I certify that the above is a true and correct summary of the City of Sedona Local Retirement Board for the Public Safety Personnel Retirement System held on June 22, 2010

Nancy J. Wilson, Board Secretary

Date